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7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 THOMAS ROGER NEAL
3043 San Fernand Way
13 Union City, CA 94587
Certified Public Accountant Certificate No. CPA
14 74508

15 Respondent.
16

Case No. AC-2004-27

**DEFAULT DECISION
AND ORDER**

[Government Code §11520]

17 **FINDINGS OF FACT**

18 1. On or about August 2, 2005, Complainant Carol Sigmann, in her official capacity
19 as the Executive Officer of the California Board of Accountancy, Department of Consumer
20 Affairs ("Board"), filed Accusation No. AC-2004-27 against Thomas Roger Neal, Respondent,
21 before the Board.

22 2. On or about November 21, 1997, the Board issued Certified Public Accountant
23 Certificate No. CPA 74508 to Thomas Roger Neal, Respondent. The Certificate is subject to
24 renewal every two years (on July 1 of odd-numbered years) pursuant to Business and Professions
25 Code section 5070.5.

26 A. The certificate was expired and not valid during the period July 1, 1999, through
27 September 15, 1999, because the renewal fee was not paid and a declaration of
28 compliance with continuing education requirements was not submitted.

- 1 B. The Certificate was renewed on September 16, 1999, upon receipt of the renewal
2 fee and declaration of compliance with continuing education requirements in an
3 “active” status.
- 4 C. The Certificate was placed on hold effective January 10, 2000, and Respondent
5 was issued a temporary 30/150-day license pursuant to California Family Code
6 section 17520. On June 14, 2000, that temporary license was suspended, and the
7 Certificate was placed in a “denied” status and was not valid during the period
8 June 14, 2000, through August 31, 2000, pursuant to California Family Code
9 section 17520. The Certificate was released pursuant to California Family Code
10 section 17520 and was returned to an “active” status for the period September 1,
11 2000 through June 30, 2001.
- 12 D. The Certificate expired and was “delinquent”, that is, not valid, during the period
13 July 1, 2001 through August 27, 2002. Effective August 28, 2002, the Certificate
14 was renewed in an “active” status.
- 15 E. The Certificate was placed on hold effective December 25, 2002, and Respondent
16 was issued a temporary 30/150-day license pursuant to California Family Code
17 section 17520. On January 29, 2003, that temporary license was suspended, and
18 the Certificate was placed in a “denied” status and was not valid during the period
19 January 29, 2003, through March 13, 2003, pursuant to California Family Code
20 section 17520. The Certificate was released pursuant to California Family Code
21 section 17520 and was returned to an “active” status for the period March 14,
22 2003 through June 30, 2003.
- 23 F. The Certificate expired and was not valid during the period July 1, 2003 through
24 August 13, 2003. Effective August 14, 2003, the Certificate was renewed in an
25 “active” status through June 30, 2005, and it is currently renewed in an “active”
26 status through June 30, 2007.
- 27 3. On or about August 8, 2005, Mary Ann Reeves, an employee of the Department
28 of Justice, served, by Certified and First Class Mail, a copy of Accusation No. AC-2004-27,

1 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
2 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
3 was and is 3043 San Fernand Way, Union City, CA 94587. A copy of the Accusation, the related
4 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
5 reference.

6 4. On or about August 9, 2005, the green card receipt for certified mail delivery was
7 returned to the Office of the Attorney General in Oakland by the U.S. Postal Service, signed by
8 "Thomas Neal" on August 9, 2005. The green card is attached hereto as Exhibit B, incorporated
9 herein by reference.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c).

12 6. Government Code section 11506 states, in pertinent part:

13 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
14 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
15 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
16 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

17 7. Three months have passed since service of the Accusation on August 8, 2005. An
18 un-dated, untimely Notice of Defense was received on November 9, 2005 (stamped by DOJ
19 mailroom on reverse). This is attached hereto as Exhibit C, incorporated herein by reference.
20 Respondent has thus failed to file a Notice of Defense within 15 days after service upon him of
21 the Accusation, and has therefore waived his right to a hearing on the merits of Accusation No.
22 AC-2004-27.

23 8. California Government Code section 11520 states, in pertinent part:

24 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
25 agency may take action based upon the respondent's express admissions or upon other evidence
26 and affidavits may be used as evidence without any notice to respondent."

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the

evidence on file herein, contained in the exhibits hereto and the evidentiary file, finds that the allegations in Accusation No. AC-2004-27 are true.

10. California Business and Professions Code section 5107(j) provides:

“(1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.”

11. The Board’s records and billing information obtained from the Attorney General’s Office reflect that its reasonable costs for investigation and enforcement of this matter are \$13,362.96 as of November 14, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Thomas Roger Neal has subjected his Certified Public Accountant Certificate, No. CPA 74508, to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation:

A. In re: *Angel’s YouthCenter* - Financial Statement Audit for FYE June 30, 2001 and 2000 (California Department of Social Services [“DSS”] client audit):

(1) Unlicensed Practice [Bus. & Prof. Code §§ 5050/5051/5055 & 5100(g)] in that Respondent’s license was expired and in a delinquent status at the time he performed the audit engagement, and when he issued his auditor’s reports and caused them to be filed with DSS.

(2) Gross Negligence [Bus. & Prof. Code §5100(c)]. Violations include:

a. Unlicensed practice.

b. Evidential Matter. Respondent has produced no workpapers (audit

documentation) in support of his audit opinion, and there is no evidence that the audit procedures were in fact performed.

c. Due Professional Care. Respondent's performance of the audit engagement and his preparation of his auditor's report and supplemental Yellow Book report evidenced extreme departures from the GAAS requirement that due professional care be exercised.

d. Auditor's report. Respondent's certifications, for both the auditor's report and the Yellow Book report, that he conducted the audit in accordance with professional standards were contrary to fact and were not supported by his audit procedures.

(3) Auditor's Report Violations [Bus. & Prof. Code §§ 5062 and 5100(g) and Board Rule 58], in that, *inter alia*, Respondent issued his unqualified audit opinion on the financial statements without complying with professional standards.

(4) Non-Compliance with Standards [Board Rule 58/Bus. & Prof. Code § 5100(g)] in that Respondent failed to observe professional standards in the conduct of the audit engagement.

B. In re: *Friends Group Home* - Audited Financial Statements FYE June 30, 2001 and 2000 (DSS client):

(1) Unlicensed Practice [Bus. & Prof. Code §§ 5050/5051/5055 & 5100(g)] in that Respondent's license was expired and in a delinquent status at the time he performed the audit engagement, and when he issued his auditor's reports and caused them to be filed with DSS.

(2) Knowing Preparation, Publication & Dissemination of False or Misleading Financial Statements [Bus. & Prof. Code § 5100(j)], in that Respondent, having been contacted by DSS regarding his non-licensed status, re-dated and reissued the reports, using a date on which his license would have

1 been renewed (albeit with no evidence produced regarding completion of
2 qualifying continuing education - see below). Another effect of the re-
3 dating was that the Respondent employed a date which would have
4 precluded him as auditor, from completing required audit procedures in
5 accordance with professional standards.

- 6 (3) Gross Negligence [Bus. & Prof. Code §5100(c)]. Violations include:
- 7 a. Unlicensed practice.
- 8 b. False Report Dates, in that Respondent re-dated his auditor's and
9 Yellow Book reports, representing that in fact the audits were completed
10 and the reports issued on that date when they were not.
- 11 c. Evidential Matter. Respondent has produced no workpapers (audit
12 documentation) in support of his audit opinion, and there is no evidence
13 that the audit procedures were in fact performed.
- 14 d. Due Professional Care. Respondent's performance of the audit
15 engagement and his preparation of his auditor's report and
16 supplemental Yellow Book report evidenced extreme departures
17 from the GAAS requirement that due professional care be
18 exercised.
- 19 e. Auditor's report. Respondent's certifications, for both the auditor's
20 report and the Yellow Book report, that he conducted the audit in
21 accordance with professional standards were contrary to fact and were not
22 supported by his audit procedures.
- 23 (4) Auditor's Report Violations [Bus. & Prof. Code §§ 5062 and 5100(g) and
24 Board Rule 58], in that, *inter alia*, Respondent issued his unqualified audit
25 opinion on the financial statements in the absence of compliance with
26 professional standards.
- 27 (5) Non-Compliance with Standards [Board Rule 58/Bus. & Prof.
28 Code § 5100(g)] in that Respondent failed to observe numerous

1 professional standards in the conduct of the audit engagement.

2

3 C. Several instances of Respondent's failure to timely respond, or to respond at all,
4 to Board requests for information, including a Board subpoena [Bus. & Prof. Code §5100(g) and
5 Board Rule 52]. (See Accusation, paragraph 42, for particulars.)

6 D. Failure of Respondent, while engaged in public practice, to provide, as required
7 by continuing education requirements, requested documentation to support his completion of
8 continuing education courses in support of his license renewal in the active status [Bus. & Prof.
9 Code § 5100(g)/Board Rules 87, 89 & 94].

10 5. It is found, in aggravation of penalty, that Respondent represented himself as a
11 certified public accountant without a valid permit and engaged in the practice of public
12 accountancy while unlicensed. Further, Respondent has personally benefitted from his audit
13 engagements while completely failing in his duty to produce competent audit reports, supported
14 by adequate audit documentation, which would facilitate the appropriate government agencies in
15 performing their responsibilities to assure the delivery of services to vulnerable populations and
16 to ensure that public monies are being appropriately spent. Respondent has demonstrated a total
17 lack of regard for licensing requirements, which are designed to protect the public, in part by the
18 Board's providing continuing education requirement and promulgating and enforcing other
19 standards and requirements which increase the likelihood that licensed practitioners will be
20 competent to provide certain services to the public.

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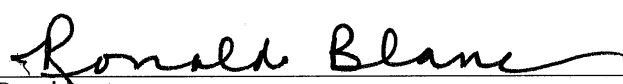
ORDER

IT IS ORDERED that Certified Public Accountant Certificate No. CPA 74508, heretofore issued to Respondent Thomas Roger Neal, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 24, 2006.

It is so ORDERED January 25, 2006.



President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

90029986.wpd
DOJ docket number:SF2004400393

Attachments:

- Exhibit A: Accusation No.AC-2004-27, Related Documents, and Declaration of Service
- Exhibit B: Postal Return Documents
- Exhibit C: Notice of Defense and Postmarked Envelope

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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2004-27

THOMAS ROGER NEAL
3043 San Fernand Way
Union City, CA 94587

ACCUSATION

Certified Public Accountant Certificate
No. CPA 74508,

Respondent.

Complainant alleges:

PARTIES AND JURISDICTION

1. Complainant Carol Sigmann brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about November 21, 1997, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 74508 to Thomas Roger Neal, Respondent. The Certificate is subject to renewal every two years (on July 1 of odd-numbered years) pursuant to Code Section 5070.5.

A. The certificate was expired and not valid during the period July 1, 1999 through September 15, 1999, because the renewal fee was not paid and a declaration of compliance with continuing education requirements was not submitted.

- 1 B. The Certificate was renewed on September 16, 1999, upon receipt of the renewal
2 fee and declaration of compliance with continuing education requirements in an
3 “active” status.
- 4 C. The Certificate was placed on hold effective January 10, 2000, and Respondent
5 was issued a temporary 30/150-day license pursuant to California Family Code
6 Section 17520. On June 14, 2000, that temporary license was suspended, and the
7 Certificate was placed in a “denied” status and was not valid during the period
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11 2000 through June 30, 2001.
- 12 D. The Certificate expired and was “delinquent”, that is, not valid, during the period
13 July 1, 2001 through August 27, 2002. Effective August 28, 2002, the Certificate
14 was renewed in an “active” status.
- 15 E. The Certificate was placed on hold effective December 25, 2002, and Respondent
16 was issued a temporary 30/150-day license pursuant to California Family Code
17 Section 17520. On January 29, 2003, that temporary license was suspended, and
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21 Section 17520 and was returned to an “active” status for the period March 14,
22 2003 through June 30, 2003.
- 23 F. The Certificate expired and was not valid during the period July 1, 2003 through
24 August 13, 2003. Effective August 14, 2003, the Certificate was renewed in an
25 “active” status through June 30, 2005.
- 26 G. The Certificate is renewed in an “active” status through June 30, 2007.

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1 (b) Maintains an office for the transaction of business as a public accountant.

2 (c) Offers to prospective clients to perform for compensation, or who does perform on
3 behalf of clients for compensation, professional services that involve or require an audit,
4 examination, verification, investigation, certification, presentation, or review of financial
5 transactions and accounting records.

6 (f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares
7 reports, all as a part of bookkeeping operations for clients.

8 6. Required Observance of Rules. Board Rule 5 requires a licensee to observe Board
9 rules if the licensee is engaged in the types of activities performed by certified public
10 accountants or who renders other professional services which include, but are not limited to,
11 bookkeeping, financial planning, investment planning, tax services and management services.

12 7. Response to Board. Rule 52 provides in pertinent part that:

13 A. A licensee shall respond to any inquiry by the Board or its appointed representatives
14 within 30 days. The response shall include making available all files, working papers and other
15 documents requested. [Rule 52(a)]

16 B. A licensee shall respond to any subpoena issued by the Board within 30 days and in
17 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.
18 [Rule 52(b)]

19 C. A licensee shall appear in person upon written notice or subpoena. [Rule 52(c)]

20 D. A licensee shall provide true and accurate information and responses to questions,
21 subpoenas, interrogatories or other requests for information or documents. [Rule 52(d)]

22 8. Professional Standards (Audits of Financial Statements and Auditor's Reports).

23 Board Rule 58 provides that licensees engaged in the practice of public accountancy must
24 comply with all applicable professional standards, including but not limited to generally accepted
25 accounting principles ("GAAP" - see below) and generally accepted auditing standards ("GAAS"
26 - see below).³ Standards of practice pertinent to this accusation and the engagements in

27 3. "Generally accepted accounting principles" (GAAP) are the basic postulates and broad
28 principles of accounting pertaining to business enterprises. These principles establish guidelines
for measuring, recording, and classifying the transactions of a business entity. "Generally

1 issue⁴ include, without limitation:

2 A. **Generally Accepted Auditing Standards ("GAAS")** issued by the American
3 Institute of Certified Public Accountants (AICPA). The ten generally accepted auditing
4 standards⁵ are discussed at some length in the Statements on Auditing Standards ("SAS") and are
5 codified, by "AU" number, in the AICPA's *Codification of Statements on Auditing Standards*.
6 GAAS include four Standards of Reporting.

7 (1.) Among the SAS relevant herein are:

8 AU §150 (**Ten Standards**; Audit Risk; Materiality);

9 AU §210 (Training and Proficiency of the Independent Auditor);

10 AU §230 (Due Care). AU §230.02 imposes a responsibility on the auditor
11 to observe the standards of fieldwork and reporting;

12 AU §311 (Planning and Supervision);

13 AU §316.37 (Documentation of the Auditor's Risk Assessment);

14 AU §319 (Internal Control) and Appendix A (Control Environment
15 Factors);

16 AU §326 (Evidential Matter);

17 AU §339 (Working Papers), including AU §339A.08 requiring that the
18 auditor adopt reasonable procedures for the safe custody of working
19 papers; and

20 AU §508 (Auditor's Report).

21 _____
22 accepted auditing standards"(GAAS) are the standards prescribed for the conduct of auditors in
23 the performance of an examination of management's financial statements. See *SEC v. Arthur*
Young & Co., 590 F.2d 785, 788 nn. 2 & 4 (9th Cir. 1979).

24 4. All references herein to standards and other authoritative literature are to the versions in
25 effect at the time the audit engagements were being performed.

26 5. There are ten basic or fundamental standards, and the Statements on Auditing
27 Standards are, for the most part, devoted to elaborating on those standards. The "basic"
28 standards are codified at AU § 150. Among these ten standards are the three General standards,
the three standards of Fieldwork, and the four Reporting standards, all of which are further
described in the other SAS's.

(2.) GAAS - Specifics re: **“Reporting” Standards**

(i.) The **first “Standard of Reporting”** (AU § 150.02) provides that “The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.” This is further defined in AU § 508.08, which provides that the fourth basic element of the auditor’s standard report is the inclusion of a statement that “the audit was conducted in accordance with generally accepted auditing standards and an identification of the United States of America as the country of origin of those standards.”

(ii.) The **third “Standard of Reporting”** (AU § 150.02) provides that “Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.”

(iii.) The **fourth “Standard of Reporting”** (AU § 150.02) provides that the “report shall contain either an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed...the report should contain a clear-cut indication of the character of the auditor’s work, if any, and the degree of responsibility the auditor is taking.”

(iv.) **AU Section 508** provides further guidance regarding the relationship of the fourth reporting standard (immediately above) to the language of the auditor’s report. The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted his audit in accordance with GAAS. **AU Section 530** states, in part, that the date of the auditor’s report should be the date the field work and corresponding review of events subsequent to the balance sheet date is completed.

B. **Generally Accepted Governmental Auditing Standards (“GAGAS”)**, set forth in *Government Auditing Standards - Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, and issued by the Comptroller General of the United States,

1 United States General Accounting Office, 1994 rev. as amended (the "Yellow Book"). For a
2 "Yellow Book" audit, these standards, in addition to requiring observance of the GAAS
3 requirements set forth above, provide additional requirements, *e.g.*, supplemental working paper
4 documentation requirements, additional reporting requirements (reports on internal control and
5 compliance with laws and regulations), and quality reviews, as set forth hereinafter. Among
6 specific GAGAS standards pertinent herein are, without limitation:

7 (1) GAGAS Supplemental Working Paper Requirements: Section 4.34 of
8 Generally Accepted Government Auditing Standards ("GAGAS" or the "Yellow Book") requires
9 that a record of the auditors' work be retained in the form of working papers. Section 4.35
10 provides that "Working papers should contain sufficient information to enable an experienced
11 auditor having no previous connection to the audit to ascertain from them the evidence that
12 supports the auditors' significant conclusions and judgments."

13 (2) Quality Control/Review: Section 3.31 provides that "Each audit
14 organization conducting audits in accordance with these standards should have an appropriate
15 internal quality control system in place and undergo an external quality control review." Section
16 3.33 provides that "Organizations conducting audits in accordance with these standards should
17 have an external quality review at least once every 3 years by an organization not affiliated with
18 the organization being reviewed. [footnote omitted] The external quality control review should
19 determine whether the organization's internal quality control system is in place and operating
20 effectively to provide reasonable assurance that established policies and procedures and
21 applicable auditing standards are being followed."

22 (3) GAGAS Continuing Education Requirements: Section 3.6 requires, *inter*
23 *alia*, that each auditor responsible for planning, directing, conducting, or reporting on audits
24 under GAGAS complete, every 2 years, at least 80 hours of continuing education and training, of
25 which at least 24 hours should be in subjects directly related to the government environment and
26 to government auditing. Section 3.7 makes the audit organization responsible for establishing
27 and implementing a program to ensure that auditors meet the continuing education and training
28 requirements set forth in Section 3.6, and requires that the audit organization maintain

1 documentation of the education and training completed.

2 (4) GAGAS Additional Reports Required: Section 5.3 incorporates the
3 reporting requirements of GAAS and prescribes additional standards, including the requirement
4 to report on compliance with laws and regulations (see sections 5.5 through 5.16) and to report
5 on internal controls (see sections 5.17 through 5.25).

6 (5) Sixth Supplemental Reporting Standard: GAGAS requires that audit
7 reports are to be submitted, inter alia, to officials who have legal oversight authority or who may
8 be responsible for taking action and to others authorized to receive such reports (Section 5.32).

9 C. Other laws and regulations, including those of the California Department of Social
10 Services (CDSS). Among the regulations pertinent herein are CDSS regulations found in its
11 Manual of Policies and Procedures, Division 11, Section 11-405, which regulate group homes'
12 requirements for financial audits. Audits must also meet the Federal Welfare and Institutions
13 Code (see WIC Section 11466.21).

14 D. The AICPA *Code of Professional Conduct*, which includes Section I - Principles and
15 Section II - Rules. Both the Principles (Articles III and VI) and the Rules (Rule 102, rule 501)
16 are relevant to the allegations herein. For example, Rule 102 (Integrity and Objectivity),
17 provides that:

18 "In the performance of any professional service, a member shall maintain
19 objectivity and integrity, shall be free of conflicts of interest, and shall not
20 knowingly misrepresent facts or subordinate his or her judgment to others."

20 9. Continuing Education Requirements for Licensure and Active Practice.

21 A. Board Rule 80 provides that the holder of an inactive license shall not engage
22 in the practice of public accountancy as defined by Code Section 5051.

23 B. Board Rule 87 sets forth continuing education requirements for license
24 renewal.

25 C. Board Rule 89 requires that a licensee obtain and retain for four or six years
26 (depending upon the credit claimed) after renewal of his license a certificate of completion or its
27 equivalent. The rule provides that the Board may verify such information and require a licensee
28 to make up any deficiency, during which time the licensee shall be ineligible for active status

1 license renewal. The rule further provides that the willful making of any false or misleading
2 statement, in writing, concerning his continuing education constitutes cause for disciplinary
3 action.

4 D. Board Rule 94 provides that the failure, by a licensee engaged in active
5 practice, to comply with the Board's continuing education rules and requirements constitutes
6 cause for discipline under Code Section 5100.

7 10. Pursuant to Code section 118(b), the suspension, expiration, or forfeiture by
8 operation of law of a license issued by the Board shall not, during any period in which it may be
9 renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or
10 continue a disciplinary proceeding against the licensee upon any ground provided by law or to
11 enter an order suspending or revoking the license or otherwise taking disciplinary action against
12 the licensee on any such ground. Further, Code section 5109 provides, *inter alia*, that the
13 expiration of a license shall not deprive the Board of jurisdiction to proceed with any
14 investigation or action or disciplinary proceeding against the licensee. Code section 5070.6
15 provides that an expired permit may be renewed at any time within five years after its expiration
16 upon compliance with certain requirements.

17 11. Cost Recovery. Code Section 5107 authorizes the Board's recovery of certain costs
18 which result from the investigation and prosecution of violations of the Accountancy Act.
19 Section 5107(a) of the Code provides in pertinent part that the executive officer of the Board may
20 request the administrative law judge, as part of the proposed decision in a disciplinary
21 proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct
22 in violation of Section 5100 to pay to the Board all reasonable costs of investigation and
23 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
24 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
25 costs signed by the Executive Officer, constitute prima facie evidence of reasonable costs of
26 investigation and prosecution of the case.

27 12. Code section 5000.1 provides as follows: "Protection of the public shall be the
28 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,

1 and disciplinary functions. Whenever the protection of the public is inconsistent with other
2 interests sought to be promoted, the protection of the public shall be paramount.”

3
4 **FOR CAUSES FOR DISCIPLINE**

5 **Angel's Youth Center - Financial Statement Audit for FYE June 30, 2001 and 2000**

6 **First Cause for Discipline - Unlicensed Practice**
7 **[Bus. & Prof. Code §§ 5050/5051/5055 & 5100(g)]**

8 13. On or about May 1, 2002, Respondent issued an audit report resulting from his
9 audit engagement for Angel's Youth Center (“Angel's”)⁶. The audit report was issued on
10 Angel's financial statements for the fiscal years ended June 30, 2001 and 2000. This report was
11 filed with the California Department of Social Services (“DSS”). His auditor's report asserted
12 that Respondent conducted his audit in accordance with GAAS and GAGAS, and that the
13 financial statements were fairly presented in accordance with GAAP. Respondent also issued, on
14 May 1, 2002, his report on internal control and compliance with laws and regulations (“Yellow
15 Book report”) as required by GAGAS.

16 14. Incorporating by reference the matters alleged in paragraph 2. D. above,
17 Respondent is subject to disciplinary action under Code Sections 5050, 5051 and 5055 in
18 conjunction with Code Section 5100(g) in that Respondent's license was not valid:

19 A. At the time he performed the audit engagement of Angel's Youth Center's
20 financial statements.

21 B. At the time Respondent issued his auditor's reports on Angel's Youth
22 Center's financial statements, and caused the reports to be filed with DSS. Respondent knew or
23 should have known that the reports had to be filed with DSS, and he caused, or permitted, the
24 reports to be filed on or about May 6, 2002, with DSS.

25 15. Incorporating the matters alleged in paragraphs 13 and 14, cause is established for
26

27 6. Angel's Youth Center, Union City, California, is a not-for-profit corporation which
28 receives public monies to support its foster care program. It is required to file audit reports
with the California Department of Social Services (“DSS”).

1 the discipline of Respondent's license because Respondent has engaged in the practice of public
2 accountancy and represented himself as a licensed CPA without being duly licensed, that is,
3 while his license was expired and in a delinquent status.

4
5 **Second Causes for Discipline - Gross Negligence**
6 **[Bus. & Prof. Code Section 5100(c)]**

7 16. Complainant realleges the matters in paragraphs 13 and 14 as though fully set forth.

8 17. License Expired. Respondent is subject to disciplinary action pursuant to Code
9 Section 5100(c) in that his issuance of an auditor's report and a Yellow Book report, representing
10 himself, and signing, as a CPA, during a time when his license was expired, is an extreme
11 departure from professional standards and constitutes cause for discipline of his license.

12 18. Evidential Matter. Although required by GAGAS (and GAAS) to create and
13 maintain workpapers in support of his audit opinion, Respondent has produced no workpapers
14 (audit documentation) in support of his audit opinion. Respondent is subject to disciplinary
15 action pursuant to Code Section 5100(c) in that he failed to document, in audit documentation or
16 working papers, the evidence collected and procedures performed in support of his opinion on
17 Angel's financial statements as expressed in his auditor's report and in his supplemental Yellow
18 Book report. Further, there is no evidence that the audit procedures were in fact performed. These
19 failures constitute extreme departures from applicable professional standards and provide cause
20 for discipline of his license for gross negligence.

21 19. Due Professional Care. Respondent is subject to disciplinary action pursuant to
22 Code Section 5100(c) in that his performance of the audit engagement and his preparation of his
23 auditor's report and supplemental Yellow Book report evidenced extreme departures from the
24 GAAS requirement that due professional care be exercised in the performance of the audit and
25 the preparation of the reports, constituting cause for discipline of his license.

26 20. Auditor's Report. Respondent's certification, in Respondent's audit report for
27 Angel's Youth Center's financial statements, that he had conducted his audit of Angel's financial
28 statements according to GAAS and GAGAS and that the financial statements were fairly

1 presented according to GAAP, were contrary to fact and were not supported by Respondent's
2 audit procedures. In addition, the assertions in the Yellow Book supplemental report were not
3 supported by Respondent's audit procedures. Respondent caused the issuance of both reports in
4 the absence of compliance with professional standards, constituting, in each case, an extreme
5 departure from those standards.

6 **Third Cause for Discipline -Auditor's Report Violations**
7 **[Bus. & Prof. Code Sections 5062and Board Rule 58/ 5100(g)]**

8 21. Complainant realleges paragraphs 13, 14 and 16 through 20, above, and incorporates
9 them herein by reference as if fully set forth at this point.

10 22. The certifications, in Respondent's audit reports for Angel's Youth Center's financial
11 statements, that he had conducted the audits of Angel's Youth Center's financial statements, and
12 issued his reports, according to GAAS and GAGAS, and that the financial statements were fairly
13 presented according to GAAP were contrary to fact and were not supported by Respondent's
14 audit procedures. Respondent caused the issuance of the auditor's report, with his unqualified
15 audit opinion on the financial statements, in the absence of compliance with professional
16 standards. Respondent also issued his Yellow Book report in the absence of compliance with
17 professional standards.

18 23. Incorporating by reference the matters alleged in paragraphs 20 and 21, cause for
19 discipline of Respondent's license is established under Code Section 5062, in conjunction with
20 Code Section 5100(g), for his failures in issuing the June 20, 2001 and 2000 Angel's Youth
21 Center auditor's report and his Yellow Book report.

22 **Fourth Cause for Discipline - Non-Compliance with Standards**
23 **[Board Rule 58/Bus. & Prof. Code Section §5100(g)]**

24 24. Incorporating by reference the matters alleged in paragraphs 13,16 through 20, and
25 22, cause for discipline of Respondent's license is established under Board Rule 58 in
26 conjunction with Code Section 5100(g), in that Respondent's conduct demonstrates lack of
27 conformance to professional standards.

1 *Friends Group Home - Audited Financial Statements Fye June 30, 2001 and 2000*

2 **Fifth Causes for Discipline - Unlicensed Practice**
3 **[Bus. & Prof. Code §§ 5050/5051/5055 & 5100(g)]**

4 25. On or about May 1, 2002, Respondent issued an audit report for Friends Group
5 Home's⁷ ("Friends") financial statements for the fiscal years ended June 30, 2001 and 2000. This
6 report was filed with DSS. His auditor's report asserted that Respondent conducted his audit in
7 accordance with GAAS and GAGAS, and that the financial statements were fairly presented in
8 accordance with GAAP.⁸ In his auditor's report dated May 1, 2002, Respondent referenced his
9 report on internal control and compliance with laws and regulations, required by GAGAS
10 ("Yellow Book"), and referenced *an issuance date of June 29, 2001*, (which predated his
11 auditor's report). However, the GAGAS report was filed with DSS at the same time as the
12 auditor's report, and the GAGAS report itself was dated May 1, 2002.

13 26. Incorporating by reference the matters alleged in paragraphs 2. D. and 25 above,
14 Respondent is subject to disciplinary action under Code Sections 5050, 5051 and 5055 in
15 conjunction with Code Section 5100(g) in that Respondent's license was not valid:

16 A. At the time he performed the audit engagement of Friends Group Home's
17 financial statements.

18 B. At the time Respondent issued, on May 1, 2002, his audit reports on
19 Friends Group Home's financial statements and Yellow Book report. Respondent knew or
20 should have known that the reports had to be filed with DSS, and he caused, or permitted, the
21 reports to be filed on or about May 6, 2002, with DSS.

22 27. Incorporating the matters alleged in paragraphs 25 and 26, cause is established for the
23

24 7. Like Angel's Youth Center (preceding footnote), Friend's Group Home receives public
25 monies for its Foster Care programs and is required to file audit reports with DSS. Friends
26 Group Home is a six-bed license facility and its primary purpose is to provide living skills to
27 young males between the ages of twelve and eighteen, with guidance provided by Social
Workers and Support Counselor. Friends Group Home qualifies as a Internal Revenue Code
Section 501(c)(3) charitable organization.

28 8. The report included a scope limitation regarding *My Friends*, an affiliate of *Friends
Group Home*.

1 discipline of Respondent's license because Respondent has engaged in the practice of public
2 accountancy and represented himself as a licensed CPA without being duly licensed, that is,
3 while his license was expired and in a delinquent status.

4 **Sixth Cause for Discipline - Knowing Preparation**
5 **Publication & Dissemination of False or Misleading Financial Statements**
6 **[Bus. & Prof. Code Section 5100(j)]**

7 28. Complainant realleges the matters set forth in paragraphs 25 and 26.

8 29. DSS questioned Respondent regarding his authority to produce and file the audit
9 reports as filed with DSS, that is, to practice public accountancy, in light of Respondent's expired
10 license status. Following the contact with DSS, Respondent again issued his auditor's report for
11 Friends Group Home's financial statements for the fiscal years ended June 30, 2001 and 2000.
12 This report, as well as Respondent's Yellow Book report for his Friends Group Home audit, were
13 re-dated June 29, 2001.⁹ These reports were again filed with DSS.

14 30. Incorporating by reference the matters alleged in paragraphs 28 and 29, Respondent
15 is subject to disciplinary action pursuant to Code Section 5100(j), based upon his re-dating and
16 re-issuing his auditor's report and Yellow Book report, and/or his re-filing with DSS of his re-
17 dated auditor's report and Yellow Book report. When alerted by DSS to its concern that he was
18 not licensed on the original issuance date, Respondent revised the reports (all re-dated June 29,
19 2001). This conduct constitutes the knowing preparation, publication, and/or dissemination of
20 false or misleading financial statements, establishing cause for discipline of his license.

21 **Seventh Causes for Discipline - Gross Negligence**
22 **[Bus. & Prof. Code Section 5100(c)]**

23 31. Complainant realleges the matters in paragraphs 25, 26 and 29 as though fully set
24 forth.

25 9. As set forth in Paragraph 2, Respondent's license expired on June 30, 2001, thus, had
26 the reports really been issued on June 29, 2001, Respondent would have been licensed.
27 However, as further described herein, dating the report prior to the end of the fiscal year, which
28 was the effect of the re-dating, is unprofessional conduct, including because such a date, in
essence, would "cut off" the audit and would preclude the auditor from completing required
audit procedures in accordance with professional standards, which required procedures which
extend beyond the client's year-end.

1 32. License Expired. Respondent is subject to disciplinary action pursuant to Code
2 Section 5100(c) in that his issuance of an auditor's report and a Yellow Book report, representing
3 himself, and signing, as a CPA, during a time when his license was expired, is an extreme
4 departure from professional standards and constitutes cause for discipline of his license.

5 33. False Report Dates. Respondent is subject to disciplinary action pursuant to Code
6 Section 5100(c) in that his re-dating his auditor's and Yellow Book reports, representing that in
7 fact the audits were completed and the reports issued on that date, is an extreme departure from
8 professional standards and constitutes cause for discipline of his license.

9 34. Evidential Matter. Although required by GAGAS (and GAAS) to create and maintain
10 workpapers in support of his audit opinion, Respondent has produced no workpapers (audit
11 documentation) in support of his audit opinion. Respondent is subject to disciplinary action
12 pursuant to Code Section 5100(c) in that he failed to document, in audit documentation or
13 working papers, the evidence collected and procedures performed in support of his opinion on
14 Friends' financial statements as expressed in his auditor's report and in his supplemental Yellow
15 Book report. Further, there is no evidence that the audit procedures were in fact performed. These
16 failures constitute extreme departures from applicable professional standards and provide cause
17 for discipline of his license for gross negligence.

18 35. Due Professional Care. Respondent is subject to disciplinary action pursuant to
19 Code Section 5100(c) in that his performance of the audit engagement and his preparation of his
20 auditor's report and supplemental Yellow Book report evidenced extreme departures from the
21 GAAS requirement that due professional care be exercised in the performance of the audit and
22 the preparation of the reports, constituting cause for discipline of his license. Further, the date he
23 belatedly purports to have issued his reports precedes the close of the client's fiscal year, which
24 would violate professional standards. Among other things, it would have the effect of precluding
25 the auditor from completing audit procedures as required by professional standards related to
26 reports on financial statements and the auditor's consideration of subsequent events.

27 36. Auditor's Report. The certifications, in Respondent's audit reports for Friends Group
28 Home's financial statements, that he had conducted the audits of Friend's Group Home's

1 financial statements, and issued his reports, according to GAGAS and GAAS, and that the
2 financial statements were fairly presented according to GAAP were contrary to fact and were not
3 supported by Respondent's audit procedures. Respondent caused the issuance of the auditor's
4 report, with his audit opinion on the financial statements, in the absence of compliance with
5 professional standards. Respondent also issued his Yellow Book report in the absence of
6 compliance with professional standards.

7 **Eighth Cause for Discipline - Audit Report**
8 **[Bus. & Prof. Code Section 5062]**

9 37. Complainant realleges the matters in paragraphs 25, 26 and 29 as though fully set
10 forth.

11 38. The certifications, in Respondent's audit reports for Friends Group Home's financial
12 statements, that he had conducted its audits of Friends Group Home's financial statements, and
13 issued his reports, according to GAGAS and GAAS, and that the financial statements were fairly
14 presented according to GAAP were contrary to fact and were not supported by Respondent's
15 audit procedures. Respondent caused the issuance of the auditor's report, with his audit opinion
16 on the financial statements, in the absence of compliance with professional standards.
17 Respondent also issued his Yellow Book report in the absence of compliance with professional
18 standards.

19 39. Incorporating by reference the matters alleged in paragraphs 37 and 38, cause for
20 discipline of Respondent's license is established under Code Section 5062, in conjunction with
21 Code Section 5100(g), for his failures in issuing the June 20, 2001 and 2000 Friends Group
22 Home audit report.

23 **Ninth Cause for Discipline -NonCompliance with Standards**
24 **[Board Rule 58/Bus. & Prof. Code Section §5100(g)]**

25 40. Complainant realleges the matters in paragraphs 25, 26 and 29 as though fully set
26 forth.

27 41. Incorporating by reference the matters alleged in paragraph 40, cause for discipline
28 of Respondent's license is established under Board Rule 58 in conjunction with Code Section

1 5100(g), in that Respondent's conduct demonstrates lack of conformance to professional
2 standards.

3 **Failures to Observe Board Rules**

4 **Tenth Cause for Discipline - Failure to Respond to**
5 **Board Requests and Subpoena**
6 **[Bus. & Prof. Code Section 5100(g)/Board Rule 52]**

7 42. Respondent is subject to disciplinary action pursuant to Board Rule 52 in conjunction
8 with Code Section 5100(g) in that Respondent has repeatedly failed to timely respond to the
9 Board or to respond at all to its inquiries, as follows:

10 A. Board's Request [9.16.02] and Respondent's Response. In response to a complaint
11 filed by another California regulatory agency, the California Department of Social Services
12 (CDSS), on September 16, 2002, the Board investigator requested that the Respondent provide
13 his response to allegations that he issued an audit report while unlicensed. Respondent was
14 asked to provide copies of the reports and working papers for the subject audit, a description of
15 his practice, a copy of his last peer or quality review, and copies of certificates of completion for
16 continuing education courses taken during the renewal period ending June 30, 2001, and for the
17 subsequent renewal period.

18 On October 24, 2002, Respondent left a voice mail message requesting a return call. On
19 October 29, 2002, Respondent was unable to take a call from the Board investigator. Respondent
20 left a subsequent message inquiring when he could bring the requested materials to the Board
21 investigator. The Board investigator left a message that it was sufficient to mail the materials.
22 On November 14, 2002, the Board investigator telephoned Respondent's office and was
23 informed that he was out of town until November 25, 2002.

24 B. Board's Second Request [11.14.02] and Respondent's Response. The November 14,
25 2002, telephone call was followed by a **second** written request from the Board investigator, dated
26 **November 14, 2002.** The Board investigator called Respondent's office on December 11, 2002,
27 and left a message with the receptionist. On December 12, the Board investigator called
28 Respondent's office and was told by Respondent that he would call her back in about twenty
minutes. The Board investigator did not receive a return phone call.

1 C. Board's Third Request [12.20.02]. A third request for the Respondent's response
2 was mailed to him via regular and certified mail at his address of record on December 20, 2002.
3 No response was received.

4 D. Board's Subpoena [09.02.03]. No response having been received to its third request,
5 the Board requested that the Respondent appear in person (at the next scheduled Administrative
6 Committee meeting most convenient for Respondent) and produce materials, to respond to its
7 inquiry. On August 14, 2003, the Respondent appeared before a Board Investigative Hearing.
8 Respondent did not bring the materials requested but promised to provide the Board with all
9 information previously requested. Pursuant to an understanding reached during the Investigative
10 Hearing, the Board issued a Subpoena on September 2, 2003, requesting specific information and
11 documents. In addition to that information previously requested, an explanation/clarification was
12 requested regarding the issue dates and revised reports for both audits, and documentation was
13 requested re: the Respondent's enrolled agent status (with the Internal Revenue Service). **No**
14 **response was received.** The Respondent did not file formal objections, informal objections, or
15 communicate in any manner with Board representatives concerning the subpoena.

16 **Eleventh Cause for Discipline - Failure of Licensee Engaged in Public Practice**
17 **to Comply with Continuing Education Requirements**
18 **[Bus. & Prof. Code Section 5100(g)/Board Rules 87, 89 & 94]**

19 43. Respondent is subject to disciplinary action pursuant to Board Rule 89 in that
20 Respondent renewed his license effective August 14, 2003 and, as alleged in paragraphs 13
21 through 15 and 25 through 27, Respondent has engaged in the practice of public accountancy but
22 has failed to provide, as required, the requested documentation to support the continuing
23 education courses he claims to have completed in support of his license renewal.

24 44. Incorporating by reference the matters alleged in paragraph 43, Respondent is
25 subject to disciplinary action pursuant to Board Rule 94 in conjunction with Code Section
26 5100(g) in that he has engaged in public practice as defined in Code Section 5051 without
27 complying with the Board's requirements for continuing education, including but not limited to
28 the requirements of Board Rule 80 and/or Board Rule 87 and/or Board Rule 89, constituting
cause for discipline of his license under Board Rule 94 in conjunction with Code Section

1 5100(g).

2 **OTHER MATTERS**

3 **Cost Recovery**

4 45. Pursuant to Code Section 5107, it is requested that the administrative law judge, as
5 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all
6 reasonable costs of investigation and prosecution in this case, including, but not limited to,
7 attorneys' fees.

8 **Discipline Considerations**

9 46. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges, in aggravation of penalty, that Respondent represented himself as a
11 certified public accountant without a valid permit and engaged in the practice of public
12 accountancy.

13 47. It is further alleged, in aggravation of penalty, that respondent has personally
14 benefitted from his audit engagements while completely failing in his duty to produce competent
15 audit reports, supported by adequate audit documentation, which would facilitate the appropriate
16 government agencies in performing their responsibilities to assure the delivery of services to
17 vulnerable populations and to ensure that public monies are being appropriately spent. Further,
18 he has demonstrated a total lack of regard for licensing requirements, which are designed to
19 protect the public, in part by setting education and other standards and requirements which
20 increase the likelihood that licensed practitioners will be competent to provide certain services to
21 the public.

22 48. Code Section 5000.1 is relevant to the penalty determination in this matter.

23
24 **PRAYER**

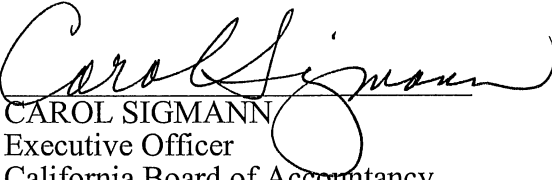
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

27 1. Revoking, suspending, or otherwise imposing discipline on Certified Public
28 Accountant Certificate Number CPA 74508, issued to Thomas Roger Neal.

1 2. Ordering Thomas Roger Neal to pay the California Board of Accountancy the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 5107;

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: August 2, 2005

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7 
8 CAROL SIGMANN
9 Executive Officer
10 California Board of Accountancy
11 Department of Consumer Affairs
12 State of California
13 Complainant

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